

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018059545603**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Eric Carl Willer (Respondent)
General Securities Representative and Investment Banking Representative
CRD No. 2263899

Pursuant to FINRA Rule 9216, Respondent Eric Carl Willer submits this Letter of Acceptance, Waiver, and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Willer first registered with FINRA in 1992. From August 2009 to December 2011 and August 2015 to June 2020, Willer was registered as a General Securities Representative with Fusion Analytics Securities, LLC (CRD No. 124245). Willer was registered as an Investment Banking Representative with Fusion from February 2018 until June 2020. From June 2020 until April 27, 2021, Willer was registered with another FINRA member firm. Although Willer is no longer associated with any FINRA member firm, FINRA retains jurisdiction over him pursuant to Article V, Section 4(a)(i) of FINRA's By-Laws.¹

OVERVIEW

From January 2017 to December 2018, Willer recommended that 13 potential investors purchase bonds in two private placement offerings without having a reasonable basis to believe that the bonds were suitable for any investor, in violation of FINRA Rules 2111 and 2010. Additionally, Willer negligently misrepresented and omitted material facts when he distributed offering documents to four potential investors that included misrepresentations and omissions, in violation of FINRA Rule 2010.

¹ For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

A. Background

Prior to the relevant period in this matter, Fusion and Registered Representative 1 sold equity in a company operated by Promoter 1 and founded by his family. The company claimed to have developed a revolutionary new engine that was cleaner and more efficient than traditional internal combustion engines. Between 2004 and 2011, the company raised more than \$80 million through the sale of equity in unregistered offerings.

The SEC filed an Order Instituting Cease-and-Desist Proceedings in 2013, imposing sanctions on the company and Promoter 1. The SEC found that the unregistered offerings failed to qualify for registration exemptions and that Promoter 1 caused the company to engage in a plan to evade registration requirements by concealing the number of unaccredited investors. The SEC also found that offering documents for the sale of equity in the company misrepresented that investors' funds would be used only for corporate purposes. Contrary to those misrepresentations, millions of dollars were misdirected to benefit family members of Promoter 1.

In January 2017, Promoters 1 and 2 engaged Willer and Representative 1 to sell bonds for Offering 1 through Fusion. On its website and in press releases, the issuer of the bonds identified itself as a wholly-owned subsidiary of the company that was sanctioned in the 2013 SEC Order. Promoter 1 was among the issuer's management and was the president of the parent company.

Offering 1 was intended to raise \$6 million of the necessary \$7.75 million to build a power plant, which the issuer claimed would use clean energy technology patented by the company that was sanctioned in the 2013 SEC Order. Revenue from the power plant would be the only source of revenue to support payments to the bondholders. In late December 2018, the issuer commenced a second offering (Offering 2) to fund the same power plant as Offering 1. As Willer was aware, none of the issuer, its parent company, Promoter 1, or Promoter 2 had any experience building or operating a power plant.

B. Willer recommended the offerings to customers without a reasonable basis, and negligently distributed misleading communications concerning the offerings.

FINRA Rule 2111 requires an associated person to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer. FINRA Rule 2111.05 further requires associated persons to have a reasonable basis to believe, based on reasonable diligence, that a recommended securities transaction is suitable for at least *some* investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy. A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended

security or strategy. FINRA Regulatory Notice 10-22 provides that, for recommendations involving the private placement of securities, a registered representative's reasonable due diligence should include an evaluation of the issuer and individuals associated with the issuer, the issuer's purported business and prospects, and the use of the offering's proceeds. A violation of Rule 2111 is also a violation of FINRA Rule 2010, which requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Negligent misrepresentation or omission of material facts is a violation of FINRA Rule 2010.

Willer performed no investigation of the issuer or its management in connection with the offerings, other than reviewing offering documents prepared by the issuer and Promoters 1 and 2. Furthermore, the offering documents Willer used and distributed to potential investors in the sale of the bonds contained multiple, material misrepresentations that Willer failed to recognize. For example:

- The PPM distributed by Willer to potential investors claimed four "assured" revenue sources comprising approximately 75% of projected revenue and one "estimated" source of revenue to support payments on the bonds—all derived from a "Construction, Performance and Revenue Assured power production plant." But Willer was aware that the construction of the planned power plant was uncertain and dependent on a successful offering and that the revenue sources were not "assured." The PPM also projected the issuer's revenue in 2017 to be \$3,821,247. Willer, however, negligently failed to recognize that other documentation reflected that the issuer's management did not actually expect to be generating revenue until 2018.
- A summary document attached to the PPM claimed the project had "confirmed revenue" comprising approximately 75% of a projected \$3.8 million in 2017 with "cash flow to debt service ... over 2:1." Throughout the summary, there were statements of "construction assurance," "performance assurance," and "revenue assurance." Willer negligently failed to recognize that these assurances and projections were contradicted by actual projections of management and had no factual basis.
- While both the PPM and attached summary provided a lengthy biography of Promoter 1, neither disclosed the 2013 SEC Order that imposed sanctions on Promoter 1 and an affiliate of the issuer for violations concerning a prior offering, including the use of misleading offering documents.
- Offering documents distributed by Willer to potential investors in Offering 2 failed to disclose that Offering 1 raised only \$1,310,000 of the \$6,000,000 required before it was terminated by the issuer, and the issuer was in continuous breach of debt covenants in loan documents associated with Offering 1.

Despite Willer's failure to perform reasonable due diligence, and the misrepresentations contained in the offering documents, Willer recommended the two offerings to 13 potential investors. As a result of Willer's failure to conduct reasonable due diligence of the issuer, its management, and the offerings, Willer had no reasonable basis to believe that the offerings were suitable for any investor. As a result, Willer violated FINRA Rules 2111 and 2010.

Additionally, Willer negligently misrepresented and omitted material facts when he distributed the misleading offering documents to four potential investors, who collectively invested \$460,000 in the offerings. As a result, Willer violated FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

- a nine-month suspension from associating with any FINRA member in all capacities.

Respondent has submitted a statement of financial condition and demonstrated an inability to pay. In light of Respondent's financial status, no monetary sanctions have been imposed.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, he may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. *See* FINRA Rules 8310 and 8311.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against him;
- B. To be notified of the complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made, and to have a written decision issued; and

- D. To appeal any such decision to the National Adjudicatory Council (NAC) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
 - 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing

in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent understands and acknowledges that FINRA does not represent or advise him and Respondent cannot rely on FINRA for legal advice. Respondent has agreed to the AWC's provisions voluntarily; and no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

December 2, 2021

Date



Eric Carl Willer
Respondent

Accepted by FINRA:

Signed on behalf of the
Director of ODA, by delegated authority

December 3, 2021

Date



John F. Guild
Senior Counsel
FINRA
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